



# **TOWN OF FAIRFAX**

## **STAFF REPORT**

### **March 5, 2014**

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager *GT*  
Jim Moore, Director of Planning and Building Services

**SUBJECT:** Adoption of a resolution describing the measures taken to alleviate the condition which led to the adoption of Ordinance No. 776 and the extension of an interim urgency zoning ordinance (Ordinance No. 779) of the Town Council of the Town of Fairfax prohibiting approvals within the Highway Commercial (CH) zoning district during the pendency of the town's adoption of permanent zoning regulations and declaring the urgency thereof. Exempt from CEQA review per 14 C.C.R. § 15061(B)(3).

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#### **RECOMMENDATION**

- 1) Open/close public hearing
- 2) Adopt a resolution describing the measures taken to alleviate the condition which led to the adoption of Ordinance No. 776
- 3) Adopt an extension of an Interim Urgency Zoning Ordinance No. 779 of the Town Council of the Town of Fairfax prohibiting approvals within the Highway Commercial (CH) zoning district during the pendency of the town's adoption of permanent zoning regulations and declaring the urgency thereof

#### **DISCUSSION**

On February 5, 2014, the Town Council adopted Urgency Interim Ordinance No. 776 imposing a 45-day moratorium on the approval of any subdivision, use permit, variance, design review and sign application, or any other entitlement for use which is required in order to comply with the Town's zoning ordinances, or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities on any property located within the Highway Commercial (CH) zoning district. Projects that have received land use approvals from or have submitted completed applications to the Town within the last 90 days are allowed to receive their permits or continue through the approval process, respectively. Staff can also issue building permits under the moratorium.

This moratorium was an interim measure meant to dovetail with the rezoning of all the parcels (rezoning ordinance) with a Highway Commercial (CH) zoning designation to Central Commercial (CC), as required by the Town's General Plan. As background, in April 2012, the Town adopted an update to its general plan (the Fairfax 2010-2030 General Plan). That document, which is the overarching land use authority enacted by the Town, directed that the entirety of the Highway Commercial zoning district be rezoned to Central Commercial (Land Use Element Program LU-7.1.1.2). As the Council knows, the CH zoning district was designed

to cater to automobile uses (Fairfax Town Code § 17.096.010(B)), while the Central Commercial zoning district is designed to cater to and invite pedestrian uses (Fairfax Town Code § 17.100.010). The direction within the General Plan to rezone from CH to CC reflected one of the broader “key initiatives” of General Plan, which is to implement “[z]oning changes to preserve the character of the downtown area while incorporating residential uses, to reduce automobile use and encourage public transit and bicycle and pedestrian transportation modes.” (General Plan, p.5.) This theme is found throughout the document (e.g., Policy C-1.3 of the Circulation Element directs decision-makers for the Town to “promote Pedestrian and bicycle circulation to ensure that automobile convenience does not compromise bicycle and pedestrian safety and convenience”).

On February 13, 2014, the Council heard the first reading of Ordinance 778, which rezones all CH zoned parcels to CC. On this evening’s agenda, the Council will hear the second reading of that ordinance and vote on its passage. It should be noted that Government Code Section 65858(d) requires the Town to prepare ten (10) days prior to the expiration of the interim ordinance, a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance as a condition of the extension. The “measures taken” are the drafting and the first reading of Ordinance 778, which will rezone all parcels currently zoned CH to CC.

If approved, the ordinance would take effect April 4<sup>th</sup>. However, the initial 45-day moratorium expires March 22<sup>nd</sup>, prior to the earliest effective date of the rezoning ordinance. To avoid a gap between the effective date of the rezoning ordinance and the expiration of the moratorium, staff recommends the Council extend moratorium for the maximum of 10 months and 15 days. The moratorium will automatically expire upon the earlier of either (a) the rezoning going into effect or (b) ten months and fifteen days from passage of the extension. This will provide the Council a cushion should the rezoning action be delayed.

#### **FISCAL IMPACT**

None

#### **ATTACHMENTS:**

Resolution 14-12

Urgency Interim Ordinance No. 779

## **RESOLUTION 14-12**

### **A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX ADOPTING A WRITTEN REPORT DOCUMENTING THE MEASURES TAKEN TO ALLEVIATE THE CONDITIONS LEADING TO THE ADOPTION OF INTERIM URGENCY ZONING ORDINANCE NO. 776**

**WHEREAS**, California Government Code § 65858 allows for the adoption of interim urgency ordinances prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable time, provided certain enumerated conditions are met; and

**WHEREAS**, pursuant to Government Code § 65858, on February 5, 2014, the Town Council adopted Interim Urgency Zoning Ordinance No. 776, an urgency ordinance prohibiting the approval of any subdivision, use permit, variance, design review, sign application, or any other entitlement for use which is required in order to comply with the Town's zoning ordinances, or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities on any property located within the Highway Commercial (CH) zoning district for a period of forty-five (45) days; and

**WHEREAS**, Interim Urgency Zoning Ordinance No. 776 was adopted on the basis of the Town Council's findings specified in the Ordinance, including the following:

- A. on April 4, 2012, the Town Council of the Town of Fairfax duly adopted the Fairfax 2010-2030 General Plan (the "General Plan"), the first update of the Town's general plan in some 35 years; and
- B. in order to protect the public health, safety, and welfare, the General Plan seeks to among other things, "preserve community and neighborhood character" (Land Use Element Goal LU-7), by, among other actions, "rezon[ing] all Highway Commercial (CH) Zone to Central Commercial (CC) Zone and revis[ing] the CC Zone as appropriate" (Land Use Element Program LU-7.1.1.2); and
- C. the existing Highway Commercial zone "is designed to cater to automobile traffic rather than to pedestrian traffic" (Fairfax Town Code § 17.096.010(B)); and
- D. the Central Commercial zone is designed to "cater to and invite pedestrian traffic" (Fairfax Town Code § 17.100.010); and
- E. the principally and conditionally permitted uses within the CH and CC zones differ, with each reflecting the types of uses to which it is designed to cater; and
- F. General Plan Circulation Element Policy C-1.3 directs the Town's decision-makers to "promote Pedestrian and bicycle circulation to ensure that automobile convenience does not compromise bicycle and pedestrian safety and convenience;" and
- G. in order to implement General Plan Land Use Element Program LU-7.1.1.2, and in furtherance of Circulation Element Policy C-1.3, Town staff prepared a proposed Ordinance No. 778, which constituted an amendment to the Town Zoning Ordinance, codified at Title 17 of the Fairfax Town Code, as well as the Town's Zoning Map, to effect the rezoning of all parcels zoned CH to CC; and

H. the Town Planning Commission considered the proposed Ordinance No. 778 on January 30, 2014, for recommendation to the Town Council.

**WHEREAS**, at this time, Ordinance No. 778 continues to be processed in accordance with the State Planning and Zoning Law, with a first reading before the Town Council on February 5, 2014, and a second reading scheduled for March 5, 2014; and

**WHEREAS**, the forty-five (45) day period during which Interim Urgency Zoning Ordinance No. 776 was initially effective will expire March 22, 2014; and

**WHEREAS**, Government Code § 65858(d) requires that ten days prior to the expiration of an interim ordinance, the Town Council must issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance; and

**WHEREAS**, the March 5, 2014, Town Council meeting at which this Resolution is being considered is the last regular meeting of the Town Council prior to the March 12, 2014, deadline for the issuance of report contemplated in Government Code § 65858(d); and

**WHEREAS**, Town Staff has prepared a report describing the measures taken to alleviate the condition which led to the adoption of the ordinance, and a true and correct copy of this report is attached to this Resolution and incorporated herein as Exhibit 'A.'

**NOW, THEREFORE, BE IT RESOLVED** as follows:

**SECTION 1. Adoption of Report.** The Town Council has reviewed the report attached to this Resolution as Exhibit 'A' and, as the legislative body of the Town of Fairfax, adopts said report as a true and accurate record of the measures taken to alleviate the conditions which led to the adoption of Interim Urgency Zoning Ordinance No. 776.

The foregoing Resolution was duly passed and adopted at a regular meeting of the Town Council of the Town of Fairfax held in said Town on the 5<sup>th</sup> day of March 2014, by the following votes, to wit:

AYES:

NOES:

ABSENT:

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DAVID WEINSOFF, Mayor

Attest:

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Michele Gardner, Town Clerk

## ORDINANCE NO. 779

### AN EXTENSION OF INTERIM URGENCY ZONING ORDINANCE NO. 776 OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX PROHIBITING APPROVALS WITHIN THE HIGHWAY COMMERCIAL (CH) ZONING DISTRICT DURING THE PENDENCY OF THE TOWN'S ADOPTION OF PERMANENT ZONING REGULATIONS AND DECLARING THE URGENCY THEREOF

**WHEREAS**, on February 5, 2014, the Town Council adopted Interim Urgency Zoning Ordinance No. 776, an urgency ordinance prohibiting the approval of any subdivision, use permit, variance, design review, sign application, or any other entitlement for use which is required in order to comply with the Town's zoning ordinances, or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities on any property located within the Highway Commercial (CH) zoning district for a period of forty-five (45) days pursuant to Government Code § 65858.

**WHEREAS**, under Government Code § 65858, the Town Council is empowered to extend said moratorium for a period not to exceed ten (10) months and fifteen (15) days, upon approval by four-fifths of the Town Council, provided urgency findings still exist.

**WHEREAS**, the findings adopted by the City in Interim Urgency Zoning Ordinance No. 776 still exist; to wit:

- A. on April 4, 2012, the Town Council of the Town of Fairfax duly adopted the Fairfax 2010-2030 General Plan (the "General Plan"), the first update of the Town's general plan in some 35 years; and
- B. in order to protect the public health, safety, and welfare, the General Plan seeks to among other things, "preserve community and neighborhood character" (Land Use Element Goal LU-7), by, among other actions, "rezon[ing] all Highway Commercial (CH) Zone to Central Commercial (CC) Zone and revis[ing] the CC Zone as appropriate" (Land Use Element Program LU-7.1.1.2); and
- C. the existing Highway Commercial zone "is designed to cater to automobile traffic rather than to pedestrian traffic" (Fairfax Town Code § 17.096.010(B)); and
- D. the Central Commercial zone is designed to "cater to and invite pedestrian traffic" (Fairfax Town Code § 17.100.010); and
- E. the principally and conditionally permitted uses within the CH and CC zones differ, with each reflecting the types of uses to which it is designed to cater; and
- F. General Plan Circulation Element Policy C-1.3 directs the Town's decision-makers to "promote Pedestrian and bicycle circulation to ensure that automobile convenience does not compromise bicycle and pedestrian safety and convenience;" and
- G. in order to implement General Plan Land Use Element Program LU-7.1.1.2, and in furtherance of Circulation Element Policy C-1.3, Town staff prepared a proposed

Ordinance No. 778, which constituted an amendment to the Town Zoning Ordinance, codified at Title 17 of the Fairfax Town Code, as well as the Town's Zoning Map, to effect the rezoning of all parcels zoned CH to CC; and

- H. the Town Planning Commission considered the proposed Ordinance No. 778 on January 30, 2014, and recommended on that date adoption of Ordinance No. 778 by the Town Council; and
- I. the Town Council held a public hearing to consider the proposed Ordinance No. 778 on February 13, 2014, and voted 5-0 in favor of the same, scheduling the second reading for March 5, 2014; and
- J. if passed on March 5, 2014, Ordinance No. 778 will not go into effect for thirty (30) days; and
- K. if allowed to expire on its own terms, Interim Urgency Zoning Ordinance No. 776 would expire prior to the effective date of Ordinance No. 778, leaving open the opportunity for new uses to be approved within the existing Highway Commercial zoning district that would conflict with the use regulations or development standards adopted with respect to such properties upon their rezoning to Central Commercial. Additionally, approval of uses within the Highway Commercial district might be sought that could cater to automobiles rather than pedestrians, thus conflicting with the General Plan's vision for the development of this portion of the Town.

**WHEREAS**, Government Code § 65858(d) requires that ten days prior to the expiration of an interim ordinance, the Town Council must issue a written report describing the measures taken to alleviate the condition which led to the adoption of the ordinance, which requirement the Town Council has fulfilled by adoption of Resolution 14-12; and

**WHEREAS**, the Town Council finds that in order to protect the public health, safety, and welfare, while the rezoning contemplated above is completed and Ordinance No. 778 goes into effect, it is necessary to extend the moratorium on the approval of any subdivision, use permit, variance, design review, sign application, or any other entitlement for use which is required in order to comply with the Town's zoning ordinances, or any other discretionary Town permit or approval for the construction, expansion, replacement, modification or alteration of any facilities on any property located within the Highway Commercial (CH) zoning district, effected by Interim Urgency Zoning Ordinance No. 776.

**NOW, THEREFORE**, the Town Council of the Town of Fairfax does ordain as follows:

**SECTION 1: Recitals.** The recitals set forth above and included within Interim Urgency Zoning Ordinance No. 776 are incorporated herein as if restated in full.

**SECTION 2: Extension of Urgency Interim Zoning Ordinance.** The Town of Fairfax hereby extends Interim Urgency Zoning Ordinance No. 776, initially adopted by the Fairfax Town Council on February 5, 2014.

**SECTION 3: Extension Effective Date and Duration.** This extension of Interim Urgency Zoning Ordinance No. 776 shall take effect immediately upon adoption, and shall expire automatically upon the earlier of either (a) the effective date of Ordinance No. 778 (which, among other things, re-zones all properties within the Town of Fairfax currently zoned CH to CC and thus obviates the need for the continuance of the moratorium which is extended hereunder), or (b) ten (10) months and fifteen (15) days from the adoption of this extension.

**SECTION 4: Severability.** If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. The Town Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

**SECTION 5: CEQA findings.** The Town Council hereby finds that it can be seen with certainty that there is no possibility that the extension of Interim Urgency Zoning Ordinance No. 776 will have a significant effect on the environment, as defined by the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., and guidelines thereto, found at 14 C.C.R. §§ 15000, et seq., collectively "CEQA"). It is therefore exempt from CEQA review pursuant to 14 C.C.R. § 15601(b)(3).

Copies of the foregoing Ordinance shall, within fifteen (15) days after its passage and adoption, be posted in three public places in the Town of Fairfax, to wit: (1) the Bulletin Board, at Town Hall Offices, (2) the Bulletin Board at the Fairfax Post Office, and (3), at the Fairfax Women's Club building, which places are designated for that purpose.

The foregoing extension to Interim Urgency Zoning Ordinance No. 776 was duly adopted at a regular meeting of the Fairfax Town Council, held in said Town on the 5th day of March, 2014, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:

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DAVID WEINSOFF, Mayor

Attest:

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Michele Gardner, Town Clerk